

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NATIONAL RIFLE ASSOCIATION OF AMERICA,

Plaintiff and Counter-Defendant

and

WAYNE LAPIERRE,

Third-Party Defendant,

v.

ACKERMAN MCQUEEN, INC.,

Defendant and Counter-Plaintiff,

MERCURY GROUP, INC., HENRY MARTIN, WILLIAM WINKLER, MELANIE MONTGOMERY, and JESSE GREENBERG,

Defendants.

Civil Action No. 3:19-cv-02074-G

**APPENDIX IN SUPPORT OF DEFENDANTS' REPLY IN SUPPORT OF MOTION TO
COMPEL PLAINTIFF'S DOCUMENT PRODUCTION AND MOTION FOR
SANCTIONS**

Defendants, Ackerman McQueen, Inc., Mercury Group, Inc., Henry Martin, William Winkler, Melanie Montgomery, and Jesse Greenberg, offer the following evidence in support of *Reply in Support of Motion to Compel Plaintiff's Document Production and Motion for Sanctions*:

EX	DESCRIPTION	APPX
B	Declaration of Brian E. Mason, dated April 6, 2020	APP001-APP003
B-1	Hearing transcript dated February 6, 2020, <i>NRA v. AMc, et al.</i> , Superior Court of Virginia, Cause CL19001757, CL19002067 and CL19002886.	APP004-APP010

Dated: April 6, 2020

Respectfully submitted,

/s/ Brian E. Mason _____

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically served via the Court's electronic case filing system upon all counsel of record on this 6th day of April 2020:

/s/ Brian E. Mason _____

Brian E. Mason

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NATIONAL RIFLE ASSOCIATION OF AMERICA,

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ACKERMAN MCQUEEN, INC.,

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Defendants.

Civil Action No. 3:19-cv-02074-G

DECLARATION OF BRIAN E. MASON

Pursuant to 28 U.S.C. § 1746, I, Brian E. Mason, hereby declare as follows:

1. My name is Brian E. Mason. I am over eighteen years of age. I have never been convicted of a felony or misdemeanor involving moral turpitude. I am fully competent to make this declaration. I am a lawyer at Dorsey & Whitney, LLP (“*Dorsey*”) and counsel of record for Ackerman McQueen, Inc. (“*AMc*”), Mercury Group, Inc. (“*Mercury*”), Henry Martin (“*Martin*”), William Winkler (“*Winkler*”), Melanie Montgomery (“*Montgomery*”), and Jesse Greenberg (“*Greenberg*”) (collectively, “*Defendants*”) in the above-captioned matter (the “*Texas Lawsuit*”). I am also admitted pro hac vice representing AMc and Mercury Group in the following lawsuits

in Virginia: *National Rifle Association of America v. Ackerman McQueen, Inc., et al.*, Case Nos. CL19002067, CL19001757, and CL19002886, pending before the Circuit Court for the City of Alexandria, Virginia (collectively, the “**Virginia Lawsuits**”). I have personal knowledge of the facts set forth in this declaration and acknowledge them to be true and correct.

2. On February 3, 2020, I, along with my colleague, Kelsey Taylor, conferred with counsel for Plaintiff (Beth Landes, Jason McKenney, and Michael Collins) regarding the Motion to Compel. During the conference, I repeatedly represented to Plaintiff’s counsel that we were prepared to specifically address each of Plaintiff’s many responses and objections that were deficient. In response, Plaintiff’s counsel told me that we should instead proceed topically because a one-by-one review “won’t get us anywhere.”¹ Based on Plaintiff’s counsel’s instructions, I did just that.

3. Specifically, I raised questions about—and challenged Plaintiff’s positions on—the topics addressed in the Motion to Compel, including, but not limited to the following:

- a. Privilege objections, including seeking clarification and whether requests accompanied by relevance objections were being withhold *in toto*, which counsel “took under advisement”;
- b. New York Attorney General-related requests, including the Lockton and Carry Guard matters, which I explained Plaintiff put at issue when: (i) it first submitted AMc to a document request on the basis of those matters, which then devolved into full-blown audits that are the basis of the first Virginia lawsuit, Plaintiff’s breach of contract claims in this lawsuit, and AMc’s defamation claim, and (ii) Plaintiff made statements in the media about those initial and subsequent document demands, all of which counsel “took under advisement”;

¹ Cf. ECF 70 at 6 § A (1) & 27 § F.

c. Objections to requests that refer to Wayne LaPierre's deposition and whether Plaintiff is withholding non-privileged, responsive documents based on those references;

d. Requests 22 and 88 that are contradictory, concerning the Brewer Firm's communications with the media and specifically with Danny Hakim of the New York Times, and generally whether Plaintiff would be producing documents and communications with the media, to which counsel responded, "Let me think about it a little more.";

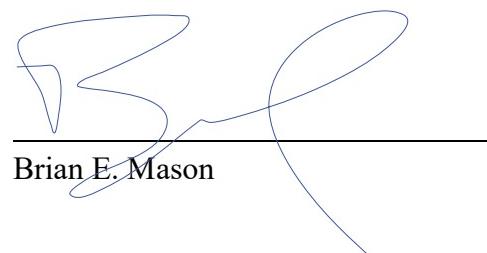
e. The Brewer Firm's public relations work and communications for Plaintiff; and

f. The Brewer Firm's invoices/billing, which I explained are relevant to show why Lieutenant Colonel Oliver North was questioning Brewer's fees, which ultimately led to his ouster, termination of the AMc Services Agreement, and the false extortion narrative, in addition to being relevant for the attorneys' fees Plaintiff seeks. I also referenced specific requests as an example (Nos. 4, 6, 39, 40).

4. Attached hereto as **Exhibit B-1** is a true and correct copy of excerpts from the hearing transcript dated February 6, 2020, *NRA v. AMc, et al.*, Superior Court of Virginia, Cause CL19001757 and CL19002067.

I declare under penalty of perjury and in accordance with 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 6th day of April, 2020.



Brian E. Mason

EXHIBIT B-1

In the Matter of:

NRA

v.

Akerman McQueen

Transcript of Hearing

February 6, 2020



Phone: 703-837-0076
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1010 Cameron Street
Alexandria, VA 22310
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Transcript of hearing

1 (1)
2/6/2020

1 V I R G I N I A:

2 IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

3 - - - - - X

4 THE NATIONAL RIFLE
ASSOCIATION OF AMERICA

5

Plaintiff

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Case Nos. CL19001757

-vs-

7

CL19002067

ACKERMAN MCQUEEN, INC.

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CL19002886

and

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MERCURY GROUP, INC.

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Defendants

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X

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Alexandria, Virginia

13

Thursday, February 6, 2020

14

The above-entitled matter came on for
hearing before THE HONORABLE NOLAN B. DAWKINS,
a Judge in and for the Circuit Court for the
City of Alexandria, Alexandria, Virginia, in
Courtroom 1, pursuant to notice, beginning at
10:18 a.m., when there were present on behalf
of the parties:

21

22

1 APPEARANCES:

2 On Behalf of the Plaintiff

3 James W. Hundley, Esquire
Robert H. Cox, Esquire
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6 Michael J. Collins, Esquire
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9 On Behalf of the Defendants

10 David H. Dickieson, Esquire
Joseph Gonzalez, Esquire
11 David Schertler, Esquire
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13 Brian E. Mason, Esquire
14 Dorsey & Whitney, LLP
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15 Dallas, Texas 75201

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17 C O N T E N T S

18

19 PAGE

20 Proceedings.....3

21

22

Transcript of hearing

	Page 63		Page 65
1	I'm sure Mr. Schertler made just an honest 2 mistake. That's who he is. It wouldn't have 3 been nothing than an honest mistake. He said 4 you already ruled on the breach of fiduciary 5 duty claim. Your Honor, you ruled that they 6 don't have a claim for breach of good faith and 7 fair dealing claim, because that is, in 8 essence, superseded in the services agreement. 9 And it looked like the breach of fiduciary duty 10 claim was, one, duplicative and, two, to try 11 to, you know, get around the plain language of 12 the services agreement. That's what you ruled, 13 your Honor. You didn't --	1	MR. SCHERTLER: And we just did the 2 first one. And I have a copy for --
14	THE COURT: I'm certainly not prepared 15 to respond to that.	3	THE COURT: I'm getting too old for 4 this.
16	MR. COLLINS: Oh, no. No, just giving 17 you context, your Honor.	5	MR. SCHERTLER: Come on, Judge, we're 6 one-eighth of the way through.
18	THE COURT: Okay.	7	THE COURT: Whoever the judge is, 8 they're going to hate me.
19	MR. COLLINS: So I think -- but I 20 think what they just said to your Honor 21 demonstrates that there's no prejudice and, 22 your Honor, especially no unfair prejudice,	9	Let's -- I want to do -- the second 10 one I think I can take care of pretty quickly 11 as the -- AMC's motion to -- for in-camera 12 review. That's denied. It's too many 13 documents. I think it's something that the 14 Court is not capable of doing. I think the 15 number of -- just the number of documents that 16 we've already discussed and the number of pages 17 that you've discussed makes it almost 18 impossible for the Court to adequately address.
19		19	You want to -- yes, sir,
20		20	MR. GONZALEZ: Yes, your Honor, 21 briefly. We refer to in-camera review. But 22 one of the other matters we raised in that
	Page 64		Page 66
1	because we're going to be doing all that work 2 the same, and Dorsey's here in the Virginia 3 action anyway.	1	motion is the issue that is undecided of 2 waiver. It's clear in this case that FRA is 3 the central witness in the first lawsuit.
4	But, your Honor, I know you're going 5 to do what you know is -- what you believe is 6 correct. And so but I would still suggest, 7 your Honor, just to delay ruling on this to 8 hear both sides' motions to compel. And I 9 think we'll give you more context. Thank you 10 so much, your Honor.	4	Their documents aren't just important to the 5 case. They are the case.
11	THE COURT: Okay. All right.	6	And so, yes, we move for in-camera 7 review. But the reason we also moved is 8 because of what the Judge said, what your Honor 9 said the last time we were here. And I think 10 your Honor acknowledged explicitly --
12	All right. Just one second.	11	THE COURT: I know that I said that.
13	MR. SCHERTLER: Your Honor, if I may, 14 I have a cheat sheet.	12	I'm certain that I said what I said. But I
15	THE COURT: Yes. Please.	13	think that I said that kind of without
16	MR. SCHERTLER: It lists all the	14	knowledge of what I've read recently about the
17	motions that I think we have. Maybe this would	15	number of documents and what I'm going to have
18	help you.	16	to review and make a decision on. And
19	THE COURT: I have a cheat sheet too.	17	ultimately it seems to me that that would
20	MR. SCHERTLER: Okay. Your cheat	18	require a trial within a trial.
21	sheet's probably better than mine.	19	MR. GONZALEZ: Your Honor, there's a
22	THE COURT: Okay. Bring it up. Okay.	20	simple solution to that.
		21	THE COURT: Yes, sir.
		22	MR. GONZALEZ: The simple solution is

Transcript of hearing

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1	this, grant our motion to compel those	1	THE COURT: Is that part of your
2	documents, because there has been a waiver.	2	motion to compel?
3	And the facts are incredibly clear on that.	3	MR. GONZALEZ: And our most recent --
4	They were the central witness. They were paid	4	and our most recent brief, your Honor.
5	by the NRA to interact AMC. And you made the	5	THE COURT: Okay. All right. Let's
6	allusion to Brady. I think you're exactly	6	hold off. Let's hear your motions to compel,
7	right. Courts around the country agree with	7	and then we'll deal with that later; okay?
8	you. It's tantamount to withholding Brady	8	MR. GONZALEZ: Thank you, your Honor.
9	evidence. It prevents us fundamentally from	9	And I appreciate that. It's so important to my
10	defending ourselves with respect to that	10	client.
11	lawsuit.	11	THE COURT: All right. Let's do that.
12	You have two actors here, AMC and FRA.	12	All right. Let's proceed. Let's go.
13	They said FRA can get up here and testify. But	13	Let's do this one, NRA's motion to compel
14	we're not allowed to ask for any documents from	14	supplemental responses to plaintiff's
15	that witness. That kneecaps us. It	15	interrogatories, motion for sanctions. How
16	fundamentally prevents us from doing	16	would you like to proceed?
17	cross-examination. And those documents, if you	17	MR. COLLINS: Judge, just very
18	take a look, if you take a look at their	18	briefly, I have mentioned to people here that I
19	privilege log, they're what the first lawsuit	19	have a health condition.
20	is about. That's what they indicate. They're	20	THE COURT: I'm sorry?
21	about the document review, the examination that	21	MR. COLLINS: I have a health
22	occurred.	22	condition that's been bothering me some today.
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1	And so essentially what the NRA is	1	So I may need to step out briefly.
2	saying, you're only going to be able to talk	2	THE COURT: Oh, whenever. Okay.
3	about this, but you're not going to be able to	3	MR. COLLINS: Okay. Thank you.
4	talk about what actually occurred, what that	4	THE COURT: All right. Do you want me
5	fact witness thought, what they said. Any	5	to adjourn, or do you --
6	other fact witness gets up there, you'd be	6	MR. COLLINS: No. No, I do not. No,
7	allowed to do that. And the courts recognize	7	I do not.
8	that. And they say when you put somebody at	8	THE COURT: Okay. All right.
9	issue, when you file a lawsuit which they did	9	MR. MCKENNEY: Should we go one
10	in the first case -- they said you didn't	10	interrogatory by one? It seems like the most
11	comply with FRA's examination -- when you make	11	practical way, your Honor.
12	that choice and you put that at issue, waiver's	12	THE COURT: Well, let's do the -- your
13	the only way you go. Otherwise it's a wrong of	13	interrogatories. And then I'll allow a
14	an unconstitutional magnitude.	14	response, and then we'll do your next one. And
15	And that's what's happening here. We	15	we'll make a decision on each interrogatory as
16	cannot defend ourselves without those	16	-- I mean each motion.
17	documents. And so, your Honor, I agree with	17	MR. MCKENNEY: Would you like me to go
18	you. It is kind of unfair to ask the Court to	18	through all of them first?
19	do that. But given the importance, given the	19	THE COURT: No, one at a time. One at
20	importance, I'd ask the Court to make a ruling	20	a time. Respond. I'll decide. Then go to the
21	at least with respect to that waiver argument,	21	next.
22	because it's crystal clear.	22	MR. MCKENNEY: Okay.

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1	problem, we want to know the finances of all	1	just going back to my argument about conserving
2	your officers and all your directors, because	2	the resources of this court, we would still
3	we want to have that in our back pocket. It	3	move to ask the Court to deny the motion to
4	has nothing to do with the case. It's a gross	4	amend the complaint.
5	invasion of privacy. The case law that relates	5	MR. COLLINS: Your Honor, we think it
6	to net worth of parties does not apply to	6	should be granted. But I don't need to say
7	officers and employees of the party.	7	anything more than I said so far. And I think
8	THE COURT: Motion's denied.	8	the next hearing will help us understand.
9	MR. MCKENNEY: Thank you, your Honor.	9	THE COURT: In light of the ultimate
10	That's all we have.	10	timing of these matters in terms of when this
11	THE COURT: All right. Now, it's now	11	matter's going to be tried, the Court will
12	half a day. It was slotted for a half day.	12	grant the motion to amend understanding that
13	Probably another half day in order to hear the	13	there may be collateral estoppel at some point
14	balance of the case. Would you suggest that's	14	if this matter's tried in the Texas court.
15	true?	15	All right.
16	MR. SCHERTLER: It's at least a few	16	MR. DICKIESON: Your Honor, there's
17	more hours.	17	one more very short matter that I think we're
18	MR. COX: Your Honor, just to let you	18	close to an agreement that counsel fly in from
19	know, if -- because it was represented a half a	19	Dallas whether or not documents in the Virginia
20	day, we don't have a problem if the Court sees	20	case --
21	fit to set this down for another date certain	21	THE COURT: You came from Dallas with
22	to finish this.	22	nothing -- not much to say; huh?
	Page 148		Page 150
1	THE COURT: Okay. Let's do this	1	MR. MASON: Just a few things briefly,
2	first. As it appears regardless of the Court's	2	your Honor.
3	ruling with regard to the issue on amending the	3	THE COURT: Say something. I don't
4	complaint, this case will take at least four	4	want you to come from Dallas and without having
5	weeks. So to that extent, I guess I'm going to	5	anything to say. Tell me anything.
6	have to send you to chambers and, one, remove	6	MR. COLLINS: I'm from Dallas too,
7	the case from the docket in April and,	7	your Honor.
8	secondly, find four weeks in the year 2021.	8	MR. MASON: Thank you, your Honor.
9	That being the case, the balance of	9	And I'll try and be -- Brian Mason from Dorsey
10	the matters scheduled for today's hearing can	10	& Whitney. I'm counsel for Ackerman McQueen in
11	be heard at a later date. And we'll schedule	11	the Dallas federal lawsuit.
12	those for another day at your convenience after	12	The issue I wanted to address briefly
13	you've gotten the new trial date.	13	was the motion to modify the Virginia
14	It seems to me kind of to short	14	protective order that was filed.
15	circuit this, again, I'm not likely to be the	15	THE COURT: Okay.
16	trial judge in this case. So I will withhold	16	MR. MASON: And just to give you a
17	any ruling on the issue with regard to the	17	little bit of context on kind of how we got to
18	in-camera review of the documents since I	18	this point, we talked about the federal case.
19	suspect ultimately the trial judge is going to	19	There was an amended complaint filed by the NRA
20	have to do that once you -- this matter is	20	back in October. And in that complaint, that
21	ultimately decided when it's going to be heard.	21	amended complaint, all of these additional
22	MR. SCHERTLER: Your Honor, I think	22	issues were alleged.

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1 CERTIFICATE OF REPORTER

2

3 I, Karen M. Smith, the stenographic
4 reporter who was duly sworn to well and truly
5 report the foregoing proceedings, do hereby
6 certify that they are true and correct to the
7 best of my knowledge and ability; and that I
8 have no interest in said proceedings, financial
9 or otherwise, nor through relationship with any
10 of the parties in interest or their counsel.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 13th day of February, 2020.

13 
14

15 Karen M. Smith

16 260496

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